

**Ian Anderson Advocate & Attorney at Law**

**Question 1: Which of the following best expresses your view of the proposed Bill?**

Fully Supportive

This issue is foreseeability. An employer who negligently exposes employees to toxic workplace substances is deemed to foresee the health effects on the employee in question. In a system without universal health care, delictual, (tort) damages also include the injured employee's medical expenses, which can be considerable. In a system which has universal health care, (Scotland), the employer's liability for health expenses is substantially reduced. The bill appears to effectively introduce a third party- in- interest into such litigation, namely the National Care Provider and makes its costs, (or estimated costs) of necessary medical treatment a foreseeable issue. The proposed act is sensible in that it may also ensure employers will be careful to avoid additional litigation costs by maintaining safe work environments.

**Question 2: What do you think would be the main practical advantages and disadvantages of the proposed Bill?**

Advantages;

- I. Recovery of health care costs.
- II. Stimulus for a safer work environment.

Disadvantages;

- I. Possible costly and complex litigation with employers' insurers over necessity of medical treatments involved and appropriateness of medical procedures used.
- II. Possible development of a two- tier health care system where possibility of recovery of medical costs encourages the National Provider to make more extensive treatments available to such injured employees, which are not normally offered due to policy considerations based on budgetary constraints.

**Question 3: What is your view of my preference for the recovery of medical costs for the treatment of industrial disease in Scotland to be incorporated into the Injury Costs Recovery scheme and administered by the Compensation Recovery Unit, part of the UK Department for Work and Pensions?**

Partially Opposed

Recovery of such costs is probably best left to legal practitioners who have expertise in such matters since employers' insurers normally fight "tooth and nail" to totally avoid or reduce liability for medical costs.

**Question 4: Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:**

- (a) **Government and the public sector:** Some reduction
- (b) **Businesses:** Some increase
- (c) **Individuals:** Cost neutral

If the private litigation route is taken with the National Provider as a party- in- interest, if the latter is successful not only could it recover the costs of medical treatment, but also its legal costs if successful. (The latter costs being a very useful bargaining chip to use against insurers.)

Liability for an injured employee' s medical costs would increase an employer's premiums for liability insurance cover. Probably also, increased costs of ensuring aspects of workplace safety which such insurers could demand.

The individual employee would basically demand damages for pain and suffering, loss of amenities of life, past and future wage loss and where relevant, loss of consortium, as in the majority of such cases as present.

**Question 5: Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?**

The appropriateness of the National Providers medical treatment and costs could be made conclusive by certification provisions in the proposed bill; e.g. by certification by two (2) National Provider physicians with expertise in the area of treatment involved. This would reduce both litigation time and legal fees involved in combating employers' insurers.

**Question 6: What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, race, religion and belief, sex, sexual orientation?**

Neutral

With the possible exception of married employees, whereas now in certain cases, the uninjured spouse attends to the injured spouse's daily needs at home without payment, (as part of their marriage vows), it is difficult to predict whether the proposed bill will have any impact on the concept of equality.

**Question 7: In what ways could any negative impact of the Bill on equality be minimised or avoided?**

In order to minimize the development of a two- tier system of medical care by the National Provider, (as referred to previously) the bill could ensure that such care must adhere to existing medical treatment policies of the National Provider.

**Question 8: Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?**

Yes

The bill should not only ensure recovery of medical costs by the National Provider and greater work safety environments, (as demanded by liability insurers), but it should also stimulate the liability insurance markets with resulting economic investment gains.

**Question 9: Do you have any other comments or suggestions on the proposal?**

Other than stating that the proposal is very apposite in a universal health care system facing the unsettling prospect of Brexit, I have nothing to add.